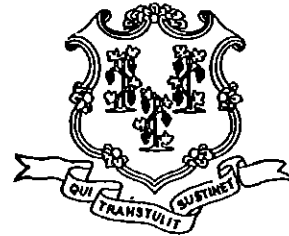


# Department of Consumer Protection



## Testimony of William Rubenstein

Commissioner of Consumer Protection

Judiciary Committee      March 23, 2011  
In opposition to House Bill 6616

Sen. Coleman, Rep. Fox, Sen. Kissel, Rep. Hetherington and honorable members of the Judiciary Committee, I am William Rubenstein, Commissioner of Consumer Protection. Thank you for allowing me the opportunity to provide written testimony on Raised House Bill 6616 "AN ACT CONCERNING THE EVIDENTIARY STANDARD FOR PUNITIVE DAMAGE AWARDS."

My remarks today address my opposition to Section 11 of this bill which seeks to unnecessarily and harmfully limit the availability of punitive damages to consumers harmed by willful or reckless violations of the Connecticut Unfair Trade Practice Act (CUTPA).

For nearly 40 years, CUTPA has been the foundational statutory scheme that protects Connecticut consumers from unfair and deceptive acts and practices and unfair methods of competition. In order to protect all consumers, the General Assembly has relied not only on governmental enforcement of CUTPA by the Department of Consumer Protection or the Office of the Attorney General. Rather, CUTPA recognizes that empowering consumers themselves to ferret out unfair and deceptive practices is essential.

To that end, CUTPA contains a well-designed set of incentives for consumers to actually protect themselves and each other. Among those incentives designed to encourage consumers themselves to challenge bad marketplace behavior is the meaningful ability to assess punitive damages in appropriate cases.

The existence of these effective consumer incentives also serves as a deterrent to those who would act unfairly and deceptively in the marketplace. Therefore, weakening the set of consumer incentives in CUTPA will undermine the effectiveness of CUTPA itself.

Our Supreme Court has referred to the strong private right of action and panoply of remedies as "[t]he crucial nature of the role envisioned for the private consumer remedy."<sup>1</sup> In recognizing this "crucial" role of private litigants, the Supreme Court quoted the following portion of CUTPA's legislative history as an example:

"The bill in general would promote greater cooperation between public and private efforts to enforce the uniform trade practices act. The Attorney General's office is hampered in this enforcement effort by limited staff. Private litigation under this act is essential and the proposal would ease the burden on private individuals and thus encourage private litigation." 22 S. Proc., Pt. 8, 1979 Sess., p. 2575. See also 19 H. R. Proc., Pt. 6, 1976 Sess., p. 2191; 16 H. R. Proc., Pt. 14, 1973 Sess., p. 7323.<sup>2</sup>

The Supreme Court has specifically noted the importance of punitive damages to CUTPA's empowerment of consumers to protect not only themselves but the marketplace as well. Again, as the Supreme Court has put it:

We have previously acknowledged the importance to the CUTPA scheme of the availability of attorney's fees and punitive damages. ... These comprehensive remedies, [were] intended to create a climate in which private litigants help to enforce the ban on unfair or deceptive trade practices or acts.<sup>3</sup>

There is absolutely no evidence that the award of punitive damages by courts under CUTPA has either been improperly or unfairly applied. Long ago, the Supreme Court has held that punitive damages under CUTPA are not available in the ordinary case, but only when the marketplace behavior has been done with "reckless indifference to the rights of others or an intentional and wanton violation of those rights."<sup>4</sup> Courts should be at liberty, as they are now, to make that determination based on the preponderance of the evidence. Significantly, while CUTPA grants consumers a statutory right to a trial by jury, section 42-110g(g) of CUTPA specifically provides that punitive damages, if any, will be awarded by the court and not by the jury. Thus, CUTPA assures that appropriate standards will be applied in deciding whether and to what extent punitive damages should be awarded based upon the evidence in a particular case.

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<sup>1</sup> Hinchliffe v. American Motors Corp., 184 Conn.s 607, 615 n.5 (1981).

<sup>2</sup> Id.

<sup>3</sup> Associated Investment Co. v. Williams Assoc. IV, 230 Conn. 148, 160 (1994). (citations and internal quotations omitted)

<sup>4</sup> Gargano v. Heyman, 203 Conn. 616, 622 (1987) (setting the standard but finding that the trial court was correct in refusing to award punitive damages since the preponderance of the evidence did not meet the standard)

Section 11 of HB 6616 limits and weakens the punitive damages section of CUTPA. First, it requires "clear and convincing proof," a higher threshold than currently exists. Second, it permits awards of punitive damages only for conduct that is "wanton," a narrowing of the range of egregious behavior to which punitive damages may currently be applied. Simply put, Section 11 creates barriers to making punitive damages an effective deterrent. Given the important role of punitive damages in assuring CUTPA's effectiveness, and further given that there is no evidence that punitive damages in CUTPA cases have been improperly or unreasonably applied, the limitations imposed by HB 6616 are unwise and will undermine important consumer protections and enforcement policies. For those reasons, I oppose Section 11 of HB 6616.

Thank you for the opportunity to provide these remarks. I would be happy to address this further or answer any questions you may have. Please contact me, or DCP's Legislative Program Manager, Gary Berner if you have any questions.

